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TECHNOLOGY AND HANDICAPPED PEOPLE

Working Paper #6

Technology and Entitlements for Handicapped People: Some Problems and Solutions in Michigan

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Preface

This volume contains papers written for OTA to assist in preparation of the report *Technology and Handicapped People*. OTA does not endorse these papers. In several instances, the OTA report reaches somewhat different conclusions because of additional information which was obtained later. These papers, however, may prove valuable for readers needing more detailed or specific information than could be accommodated in the final assessment report, and are being made available for such purposes.

TECHNOLOGY AND ENTITLEMENTS
FOR HANDICAPPED PEOPLE:
SOME PROBLEMS AND SOLUTIONS
IN MICHIGAN

Working Paper #6

FOREWORD

Technology exerts a powerful influence over the lives of everyone, making life easier, more fulfilling, but sometimes more painful and frustrating. This is especially true for people with disabilities. The appropriate application of technologies to diminishing the limitations and extending the capabilities of disabled and handicapped persons is one of the prime social and economic goals of public policy.

The Federal Government is deeply involved in programs that affect the development and use of technologies for disabilities. Congress and other institutions have been increasingly interested in how well programs that directly develop technologies and support their use have been performing. The Senate Committee on Labor and Human Resources requested the Office of Technology Assessment (OTA) to conduct a study of technologies for handicapped individuals. That study examined specific factors that affect the research and development, evaluation, diffusion and marketing, delivery, use, and financing of technologies directly related to disabled people. The problems and processes of the development and use of technologies were analyzed in the context of societal allocation of resources and the setting of goals for public policy. The main report of the study Technology and Handicapped People was released in May 1982.

This case is Working Paper #6 of the study. Working Paper #6 was authored by Kent Hull, Esq., of the University Center for International Rehabilitation, Michigan State University. A number of case studies will be published as part of the assessment and each will be issued separately. The case studies were commissioned by OTA both to provide information on specific technologies and to gain lessons that could be applied to the broader policy aspects of technology and disability.

Each author is responsible for the conclusions of specific case studies. These cases are not statements of official OTA position. OTA does not make recommendations or endorse particular technologies. These papers may prove valuable for readers needing more detailed or specific information than could be accommodated in the final assessment report and are being made available for such purposes.

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TECHNOLOGY AND ENTITLEMENTS FOR HANDICAPPED PEOPLE:

SOME PROBLEMS AND SOLUTIONS IN MICHIGAN

1. TECHNOLOGY AND LEGAL ENTITLEMENTS

The Supreme Court, Section 504, and Technology

It would be too broad a generalization to say that the establishment of civil rights for handicapped individuals has been a direct function of technological changes. But it is clear that the capacity of society to implement certain rights on behalf of handicapped individuals preceded the establishment of major entitlements in federal law. Moreover, it is becoming clear that courts and administrative agencies enforcing those statutes are concerned about the issue of technology, and assess it as an important factor in applying the statutes to specific situations. The Supreme Court of the United States explicitly noted the relationship between Section 504 of the Rehabilitation Act and technology in Southeastern Community College v. Davis, (442 U.S. 397 1979). In that case, one of the issues was the extent to which a federally-assisted registered nursing education program could be required, under Section 504, to make modifications in its curriculum to enable a hearing-impaired individual to take courses. The Court held, on the record of that case, that the nursing program was not required to make the changes which the Court thought necessary for that plantiff. Nevertheless, it recognized a general obligation by recipients to make some changes and tied that obligation to the existence of technology:

> We do not suggest that the line between a lawful refusal to extend affirmative action, and illegal discrimination against handicapped persons will always be clear. It is possible to envision situations where an insistence on continuing past requirements and practices might arbitrarily deprive generally qualified handicapped persons of the opportunity to participate in a covered program. Technological advances can be expected to enhance opportunities to rehabilitate the handicapped or otherwise to qualify them for some useful employment. Such advances also may enable attainment of these goals without imposing undue financial and administrative burdens upon a State. Thus, situations may arise where a refusal to modify an existing program might become unreasonable and discriminatory. Identification of those instances where a refusal to accommodate the needs of a disabled person amounts to discrimination against the handicapped continues to be an important responsibility of HEW (442 U.S. at 412-413) (Emphasis supplied).

This part of the Davis decision is one of the most important, and in many ways, most ambiguous statements made by any court concerning the rights of handicapped individuals. The Supreme Court is here dealing with one of the most important concepts underlying the movement for equal rights among handicapped people: the need for accommodations, modifications and changes to alter the obstacles created by past discrimination. The demand for accommodations springs from the realization that, in the past, society has excluded handicapped people from active participation in many different ways. One obvious example is the structural barriers that exist in buildings and transportation systems. Another although less obvious barrier, is the practice of employers of defining job requirements without any understanding of alterations that might be needed by handicapped employees. A third example of barriers, and that which was an issue in the Davis case, was the structure of a college curriculum which prevented a handicapped student from participating.

Because Davis was the first Supreme Court interpreting the obligation of a State under Section 504, and because the decision was closely tied to technological factors, it deserves additional discussion. The plaintiff was a severely hearing impaired woman who had worked for a number of years as a licensed practical nurse. The record in the case is not clear about the exact degree of her hearing impairment, but there is some suggestion in the lower court opinion that a better hearing aid might have remedied some of her loss. After completing the academic portion of the nurse's training program, the college refused to admit her to the clinical portion, claiming that her disability prevented her from meeting course requirements, as well as later State licensing requirements.

The fundamental question before the Supreme Court was whether she was an "otherwise qualified handicapped individual" as defined by the Rehabilitation Act, and whether her exclusion violated Section 504. The lower court opinion, issued by the Court of Appeals for the Fourth Circuit, had found that the college acted illegally in excluding her. However, the lower court did not order her admission. Rather, it faulted the college because of its admission and evaluation process. The Fourth Circuit ordered the college to reevaluate her in two ways. First, the college was to assess her total academic and technical competence:

> The college must reconsider plaintiff's application for admission to the nursing program without regard to her hearing disability. The College may consider such other relevant subjective and objective factors as it deems appropriate, consonant of course with a fair and essentially uniform application of those same subjective and objective factors utilized in the consideration of other candidates for enrollment in the nursing program (footnote ommitted). (574 F.2d1158, 1160 (C.A.4 1978)).

Second, to the extent that the college decided that her handicap prevented her from participating in a regular curriculum, it was required to make an assessment of what accommodations could be made to allow her participation. In short, the college had to consider the possibility of making changes and modifications in its existing curriculum.

The Fourth Circuit based its decision on two regulations which had been promulgated by the Department of Health, Education, and Welfare, (HEW) imposing requirements on post-secondary and vocational education recipients of federal financial assistance. One regulation required:

> With respect to post-secondary and vocational educational services (an otherwise qualified handicapped person is one) who meets the academic and technical standards requisite to admission for participation in the recipient's education program or activity (45 C.F.R. 84.3(k)(3)(Emphasis supplied)).

Additionally, the Fourth Circuit based its requirement that the college consider accommodations on this HEW regulation:

> A recipient . . . shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student . . . Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted (45 C.F.R. 84.44(a)).

It is again obvious that the role of technology was an important part in the relationship between the Fourth Circuit opinion and the HEW regulations. Technology is important in this decision in at least three ways. First, it is essential in the process of evaluating her real abilities, apart from her handicap. Second, it is important in assessing whether the established academic and technical standards used by the nursing college were accurate, fair, and necessary. Third, to the extent that accommodations were necessary to enable her to participate, technology is important in developing the adaptations and changes required.

In several ways, then, the uses of technology in the implementation of Section 504 can contribute to important goals implicit in that law. To the extent that it leads to better and more complete evaluations of handicapped individuals for particular occupations or other entitlements, it is an important ally in ending the stereotypes which underlie a great deal of the discrimination against handicapped people. Second, it is obviously important, as noted above, in the actual development of appropriate accommodations. Third, its role in the previous two situations will greatly enhance the chances of the overall important goal of handicapped civil rights, which is to integrate those individuals more actively into their society.

As a final note on the Davis case, the reaction to it has been very unfavorable, especially among handicapped individuals. In holding that the plaintiff was not an "otherwise handicapped" individual, and that the nursing program was not required to made accommodations for her, the Court issued an opinion which has had unfortunate results. These difficulties also pertain to technological problems. First, the decision created serious ambiguities about the coverage and enforcement of Section 504. The Court approved the physical requirements which had been imposed upon Davis, although the record in the case indicated that there had been no real effort to examine their relevance and necessity. At the same time, the Court indicated that it would allow only legitimate and necessary standards to assess physically handicapped applicants in similar situations, but it offered no guidance about how to determine if particular standards are appropriate, nor to what other kinds of programs, in addition to nurses training, they could be applied. Additionally, the Court seemed to show great deference to State licensing requirements which serve as a basis for physical standards or admission to nursing programs. But it did not consider the question of what to do when those standards themselves are discriminatory and based upon falacious assumptions.

Related to the difficulties in the Supreme Court decision on the evaluation question are ambiguities left by its language on accommodations. The Court explicitly recognized that, in some situations, a "refusal to modify an existing program might become unreasonable and discriminatory." Yet, it gave almost no guidance in deciding what those situations were. What little it did say has important implications for technology and for administrative agencies that are familiar with existing technology. The Court implied that one significant factor may be technological advances, especially those which allow accommodations to be made without undue expense. It concluded that identification of those instances "where a refusal to accommodate that needs of a disabled person" constituted discrimination would continue to be an important responsibility of what was then the Department of Health, Education and Welfare (442 U.S. at 413).

Given this interpretation of the law, it may be increasingly important for Congress to support research and demonstration programs that deal with technological questions. Moreover, it is clear that if these technological issues were so important in the first decision by the Supreme Court under the law, they will continue to be crucial questions throughout implementation efforts by other federal courts.

Recognition of Technology in HEW Section 504 Regulations

In 1977, the former Department of Health, Education and Welfare promulgated regulations to implement Section 504 of the Rehabilitation Act of 1973. These regulations were important for two reasons. First, although they applied only to the programs assisted by HEW, they were the first departmental regulations issued to implement the statute. Second, under Executive Order 11914, HEW had been designated by the President to be the lead enforcement agency for Section 504. As such, HEW could prescribe standards for other Federal executive departments and agencies to follow in the establishment of their own Section 504 programs. The 1977 HEW regulations were important, therefore, as a precursor of anticipated policies throughout the Federal executive branch.

The regulations reflect, both explicitly and implicitly, strong concern for technology as it might affect implementation of the statues and regulations. The question of technology in the implementation process appears first in this acknowledgement that compliance with Section 504 would require more than a passive refusal to discriminate:

> There is overwhelming evidence that in the past many handicapped persons have been excluded from programs entirely or were denied equal treatment, simply because they are handicapped. But eliminating such gross exclusions and denials of equal treatment is not sufficient to assure genuine equal opportunity. In drafting a regulation to prohibit exclusion and discrimination, it became clear that different or special treatment of handicapped persons, because of their handicaps, may be necessary in a number of contexts in order to ensure equal opportunity. Thus, for example, it is meaningless to "admit" a handicapped person in a wheelchair to a program if the program is offered only on the third floor of a walk-up building. Nor is one providing equal education or opportunity to a deaf child by admitting him or her to a classroom, but providing no means for the child to understand the teacher or receive instruction (42 Federal Register 22676, May 4, 1977)).

In this statement, HEW recognizes two instances in which technology may be important in the implementation of the regulation: the elimination of architectural barriers and the provision of special modification in education programs. Additionally, HEW commissioned an Economic Impact statement which analyzed the economic and inflationary impact of the regulations.

The 1977 HEW regulations envisioned an active role for technology and technological change in several ways. One of the most important was in the regulation of employment practices. A key element in the employment discrimination regulations was the requirement that employers make "reasonable accommodation" for otherwise qualified handicapped applicants or employees, unless the employer could demonstrate that the accommodation would impose "an undue hardship on the operation of its program" (45 C.F.R. 84.12(a)). The regulations listed a number of actions which might constitute appropriate reasonable accommodations:

1. Making facilities accessible to handicapped persons.
2. Job restructuring.
3. Part-time or modified work schedules.
4. Acquisition or modification of equipment or devices.
5. The provision of readers or interpreters.
6. Other similar actions.

If employers sought to escape the reasonable accommodation requirement, they were compelled to demonstrate that a specific modification would create an undue hardship. Factors relevant to this determination included:

1. The overall size of the employer's program with respect to the number of employees, number and type of facilities, and size of budget.

2. The type of the employer's operation, including the composition and structure of the recipient's work force.

3. The nature and cost of the accommodation needed.

Commentary about these provisions indicates that HEW encountered considerable political opposition to the imposition of the reasonable accommodation requirement. One justification for this rule was that the Department of Labor had reported that it had experienced "little difficulty in administering the requirement of reasonable accommodation" under a related employment discrimination provision, Section 503. The premise of the reasonable accommodation section was that, while handicapped individuals must possess the basic qualifications for a position, they may nevertheless need changes which actually allow them to perform the duties of a given job. The reasonable accommodation provision was intended to be flexible. One example of that flexibility is the distinction drawn between large and small employers. HEW emphasized that the weight given to each factor in determining whether an accommodation constituted an undue hardship for an employer "will vary depending on the facts of a particular situation." (42 Federal Register 22688, May 4, 1977)). The regulations draw the distinction between a small day-care center that might be required to spend only a small amount of money to enable a hearing-impaired secretary to use the telephone, and a large school district that might be required to provide a teacher's aid for a blind teacher. Additionally, under the undue hardship principle, HEW might consider it reasonable to require a State agency to accommodate a deaf employee by providing an interpreter, but would consider such a modification an undue hardship for a provider of foster home care services.

The flexibility inherent in this concept of undue accommodation is one way in which technology and the application of technology plays an important role in the implementation of the rights secured under Section 504. Both drawing the lines between large and small employers, as well as developing the necessary adaptations for handicapped employees in those situations require concrete application of ideas and techniques which have never been applied before. Moreover, even in those situations where there was no dispute about the obligation of an employer to make reasonable accommodations, there could be considerable difficulty in deciding how to develop an appropriate technique. Modification of job structures and work schedules require application of technology. The physical redesign and relocation of equipment, which might be another way of accommodation, also required such technology. Thus, the implementation of the reasonable accommodation principle - one of the most basic to the achievement of equal rights in employment for handicapped individuals - necessitated the use of technology which had never been made before on behalf of handicapped individuals.

While the reasonable accommodation principles of the Section 504 regulations may be considered unique to the problem of employing disabled individuals, a second area in which the regulations prohibited discrimination required new thinking. It was in the testing and selection of applicants and employees. The regulations prohibited employers from using tests or other selection criteria that screened or tended to screen out handicapped persons, or any class of handicapped persons, unless the test or criteria met two exceptions. First, the test score of other selection criterion, as used by the employer, had to be job-related for the position in question. Additionally, it had to be demonstrated that alternative job-related tests or criteria that did not screen out or tend to screen out as many handicapped persons had not been shown by the Office for Civil Rights to be available.

Employers were required to select and administer tests concerning employment so that individuals with handicaps that impair sensory, manual, or speaking skills were accurately evaluated and not harmed by the test's inability to compensate for those impaired skills. The design of appropriate tests and evaluation criteria in employment that would not discriminate against women and minorities has been an important part of the establishment of civil rights. However, technology was again presented with a substantial challenge in these regulations, because so little is known about appropriate tests for handicapped individuals.

A further significant area in which technology would be necessary in the implementation of the regulations was in the elimination of architectural barriers. The HEW Section 504 regulations establish two broad schemes applying to inaccessible facilities. The first one is for existing facilities. The fundamental requirement was that recipients of Federal financial assistance from HEW were required to operate each program or activity so that it would be readily accessible to handicapped persons. The regulations for existing facilities State that recipients were not required to make each facility or every part of a facility accessible. A number of methods for achieving program accessibility and existing facilities were specified in the regulations. Among these were: 1) redesign of equipment; 2) reassignment of classes or other services to accessible buildings; 3) assignment of aids to handicapped individuals; 4) home visits; 5) delivery of health, welfare, or other social services at alternate accessible sites; 6) alteration of existing facilities and construction of new facilities that would be accessible; 7) any other methods that would result in making a program or activity accessible. The recipients were not required to make structural changes in existing facilities where other methods were effective in providing program accessibility. However, in choosing among available methods, recipients had to give priority to those that would enhance the integration of handicapped individuals.

The second set of criteria to achieve program accessibility concerned new construction. Here, after the effective date of the HEW regulations (June 3, 1977), each facility or part of a facility constructed by, on behalf of, or for the use of a recipient had to be accessible. Additionally, alteration of facilities had to be done in such a manner that if accessibility could be enhanced, the changes should be made to the maximum extent feasible to allow that. The regulations implicitly incorporated the standards established in 1961 and reiterated in 1971 by the American National Standards Institute. Compliance with these standards constituted compliance with the regulation. Departures from particular requirements were allowed. Variations from the use of other methods was allowed when it was clearly evident that equivalent access to the facility or part of the facility would be provided (45 C.F.R. 84.23). Technology was again an essential component in the implementation of these regulations. The elimination of architectural barriers would require imaginative and innovation designs and techniques which have never been applied in construction or renovation before. Additionally, the standards incorporated into the regulations were themselves under review and the focus of extensive discussions among experts.

However, it should also be noted that the issue in the removal of architectural barriers was not only a technical one. The obstacles which prevented the free movement of mobility impaired individuals throughout society carried a symbolic importance of the exclusion which those persons had experienced. The choices now made in the construction and design of facilities were intertwined with social and political values. The decision to put in a set of steps instead of level-entrance construction or the decsion not to put an elevator into a new constructed building carried a significance never recognized before. Thus, another example existed whereby technology was an integral part of the achievement of larger social roles.

The Role of Technology and Other Federal Entitlements

The Supreme Court decision in the Davis case, together with the regulations issued in 1977 to implement Section 504, demonstrate the importance of technology in the implementation of a major handicapped rights law. In order to assess the role of technology in the implementation of the full complement of federal legislation, it is necessary to consider some of the other major provisions which Michigan and other States must meet. The Rehabilitation Act itself is one of the oldest, and still one of the most important, Federal laws establishing programs for handicapped individuals. The civil rights provisions, of which Section 504 is an example, are only a small part of this legislation. In 1973, Congress revised the Rehabilitation Act entirely in an effort to reform and reorganize the federal vocational rehabilitation program. As now established, that program centers on the three principle tasks: services to handicapped individuals, research on a wide range of matters concerning the welfare of handicapped people, and administration of joint Federal-State programs. In 1978, major amendments to the legislation established a goal of comprehensive and coordinated programs of vocational rehabilitation and independent living.

The potential of technology in administration of the vocational rehabilitation program is immediately evident. The services are provided in the framework of a Federal-State relationship in which the Federal government contributes, ordinarily, 80% of the cost of those services, with the States providing a 20% match. The wide range of services available includes, initially, an evaluation of rehabilitation potential. This evaluation may include a diagnostic study, as well as related services incidental to the determination of eligibility. Such services are often provided by physicians or licensed psychologists; other services concerning counseling, guidance, referral and placement are provided by other professionals. Vocational and other training services can include personal and vocational adjustment, books and other training materials, and services to the families of the individuals to help them adjust to the rehabilitation program. Another major service which can be provided through vocational rehabilitation is physical and mental restoration (such as corrective surgery or therapeutic treatment necessary to correct or modify a condition that constitutes a substantial handicap to employment). Supplemental supportive services may include interpreters for deaf individuals and readers for those who are blind. Increasingly, agencies are able to utilize such technological developments as telecommunication systems which may substantially improve service delivery methods to meet the particular needs of handicapped individuals.

The 1978 amendments to the Act authorize two programs which were designed to encourage industry in the employment of handicapped individuals. One was the establishment of community service employment pilot programs, under which the Secretary of Labor could establish pilot projects in community service activities for handicapped individuals who had poor employment prospects. These projects can be quite broad, so long as they are intended to contribute to the general welfare of the community. However, they are not intended to displace existing employment; rather, they are intended to supplement present available jobs.

A second type of project, referred to as Projects with Industry, allows the Rehabilitation Services Administration, in consultation with the Departments of Labor and Commerce, to make agreements with individual employers in other industries in which jointly-financed projects provide handicapped individuals with employment in a realistic work setting. In contrast to public service-oriented projects, these programs are intended to bolster private industry and its employment of handicapped individuals.

However, the major change in 1978 amendments to the Rehabilitation Act concerned the establishment of comprehensive services for independent living. This legislation authorizes grants, supplemental to those already made for vocational rehabilitation services, to assist States in providing independent living to handicapped individuals. These services are intended to meet the current and future needs of individuals whose disabilities are so severe that they do not presently have the potential for employment, but may benefit from vocational rehabilitation services that will increase their independence. The class of individuals entitled to services are those whose ability to engage or continue in employment, or to function independently in family or community, is so severely limited that they require vocational or comprehensive rehabilitation services appreciably more costly or of greater duration for employment. Additionally, if an individual's ability to function independently in his family or community is severely limited, services may also be provided. Priority goes to those individuals who are not served by other provisions of the vocational rehabilitation program.

The wide range of services available includes counseling, housing incidental to the purposes of the community living program, appropriate job placement services, transportation, attendant care, physical rehabilitation, health and maintenance and a variety of other services. One other service which may be provided is appropriate accommodations and modifications of any living space to serve handicapped individuals. The potential for individuals trained in the technological needs of disabled persons is evident from the scope of services authorized in independent living programs.

It is important to note that a great many of the technologically oriented services which can be provided, and in some cases are mandated under the Rehabilitation Act, were not legislated until 1978. The essential connection between technology and the implementation of rights of handicapped individuals has been one identified only in the most recent years. This contrast is evident if one looks at the Education of All Handicapped Children Act of 1975 (20 U.S.C. 1401 et. seq.). In that year Congress made it very clear that it would actively participate in the education of handicapped children after determining that the needs of more than 8 million children were not being met and that more than half of the handicapped children in the United States were not receiving appropriate educational services. The 1975 legislation was intended to supplement the financial resources of local State agencies to provide special education. The law recognized that advances in teacher training, diagnostic methods, and procedures would enable effective special education and related services to be provided to handicapped children at the State and local level, given adequate public money. However, this was one of the few explicit recognitions of the role of technology in providing appropriate special education services. One reason that Congress may have been somewhat reluctant to legislate in too great detail on such a topic is that traditionally education has been an area left to States. The scheme of the legislation was to establish broad principles and rights, and then to give State and local school districts discretion and flexibility in implementing some of those programs. This legislation thus differs from the Rehabilitation Act in that it does not seem to mandate with such specificity what must be provided.

In deciding that the Federal government should become much more active in supporting appropriate education for handicapped children, Congress set up a scheme to supplement the financial resources of local and State agencies for the special educational needs of handicapped children. Technology played a part in this new policy, and the law recognized that advances in teacher training, diagnostic methods, and procedures would enable effective special education and related services to be provided at the State and local level (20 U.S.C. 1401 (note on legislative history)). The legislation has six principal parts:

1. Entitlement and allocation of funds,
2. Eligibility requirements for States to qualify for Federal assistance,
3. Requirements for State plans filed with the Federal government,
4. Application requirements for local and intermediate educational agencies to submit to State agencies in order to receive payments under the law,
5. Due process procedural safeguards,
6. Withholding of payment provisions and procedures for judicial review.

The existence of appropriate technology, in the sense of mandating those services necessary to provide appropriate public education, was one of the bases for this legislation. Technology also plays a part in the way it undergirds some important concepts in the law. One concept affected by technology is the requirement that public schools may not place individuals in institutional settings, except in exceptional cases. Individuals, to the extent that it is appropriate for each person, must be placed in a regular classroom setting or only in alternative settings close to a handicapped person's home. In those exceptional cases where public or private residential placement is necessary, the cost, including nonmedical care and board, must be met at public expense. This includes such services as transportation necessary to any program (residential or not) which a recipient does not operate. Transportation must be provided at cost no greater than that the person or the parent would incur if an individual had been placed in the original school district's jurisdiction. If the individual is placed in an institutional setting, or an alternate setting, at personal request or at the request of the family, there is no obligation for the school district to bear the expense (E.g. 45 C.F.R. 84.34(a)). This requirement favoring regular placement close to an individual's home, while not explicitly referring to technological advances, is predicated upon the theory that we now have the resources and services available to provide education in the setting most appropriate for an individual. The role of technology is implicitly important also in the Act's fundamental requirement. Each handicapped child is entitled to an "individualized education program" which is to include, among other elements, "a statement of the specific educational services to be provided to a child" (20 U.S.C. 1401(16), (19)(C)).

The law also States that handicapped children are to have available to them as varied an educational program as that available to nonhandicapped children, including such programs as art, music, industrial arts, consumer and homemaking education, and vocational education. Similarly, a very important requirement of integration of handicapped children into regular classroom settings, where such placement is appropriate to the needs of individual children, is predicatd upon certain assumptions about technology. One regulation applying this states:

> A recipient shall place a handicapped person in a regular educational environment operated by the recipients unless it is demonstrated by the recipient that the education of the person in their regular environment with the use of supplementary aids and services cannot be achieved satisfactorily (45 C.F.R. 84.34 (Emphasis supplied)).

A final example of the importance of technology and the implementation of the Education for All Handicapped Children Act is the requirement that related services, defined to mean transportation and developmental, corrective, and other supportive services required to assist a handicapped child benefit from special education, be provided as a part of the educational program (20 U.S.C. 1401(17)). A wide range of services including audiology, occupational therapy, parent counseling, and training, and recreation are included. Occupational therapy for example, is further defined under the regulations to include the improvement, the development, or the restoration of functions impaired or lost through illness, injury or depravation. It may also include improving the ability to perform tasks that may lead to independent functioning (*Ibid*.).

Technology and the Architectural Barriers Act

Another major federal law, which might be assumed to evoke the aid of technology, is the Architectural Barriers Act of 1968 (42 U.S.C. 4151 at *et. seq*.). This law, as initially enacted, directed certain agencies of the federal government with jurisdiction over various building projects to insure that new buildings and some renovations be made accessible to handicapped individuals. It was, in short, a very limited law. It applied principally to Federal government-owned buildings. Apparently, with its enactment, Congress assumed that once standards were established by the respective agencies, compliance would automatically follow. Congress established no enforcement mechanism to insure compliance until 1973, when the Rehabilitation Act created the Architectural and Transportation Barriers Compliance Board (29 U.S.C. 792). Before that time, the Act depended primarily upon the General Services Administration for its enforcement. That agency was charged first with developing standards, and then with overseeing compliance in an informal way. The standards adopted were the American National Standards Institute requirements.

It was not until 1973 that Congress found it necessary to create a separate enforcement mechanism in the form of the Architectural and Transportation Barriers Compliance Board. The principal function of the Board, in its early existence, was to serve as a coordinating agency. Its membership was made up of representatives of those agencies regulated under the law. Again, however, the focus was on cooperation, as opposed to coercion because statutory authority was not provided to the Board to terminate funding of the agencies until 1974. Moreover, staff was not actually brought into place until 1975.

The gradual growth of the Compliance Board's function is also evident from the assignments it was given with respect to technology. Before 1978, the Board had only the most general authority to make inquiries and to consider technological research. With the passage of the 1978 amendments to the Rehabilitation Act, the Board now has not only the authority but the mandate from Congress to investigate technological questions and to provide information or assistance to recipients covered by various handicapped rights laws. Moreover, the Board must investigate alternate approaches to architectural, transportation, communication, and attitudinal barriers confronting handicapped individuals. Concurrently, the Board can examine the measures being taken by the Federal, State, and local governments and other public and nonprofit agencies to eliminate barriers. The 1978 amendments to the Rehabilitation Act authorized the Board to establish minimum guidelines and requirements for standards under the Architectural Barriers Act, and to ensure that public conveyances, including rolling stock, are readily accessible to physically handicapped persons (29 U.S.C. 792).

In one sense, the history of the Board's authority offers a synopsis of the growing recognition of the importance of technology in the implementation of handicapped rights. From a general authority to coordinate actions by federal agencies, the Board's power has moved to that of an agency empowered to promulgate standards and to take judicial action to compel compliance.

Technology and Developmental Disabilities

A final important legislative reform during the 1970's which involved technology is the Developmental Disabilities Assistance and Bill of Rights Act, as amended (42 U.S.C. 6001 at *et. seq.*). This legislation was initially directed toward certain categories of handicapped individuals: those who are mentally retarded, had epilepsy, had cerebral palsy, were autistic, or had certain types of dyslexia. In 1978, Congress changed the definition from a categorical one to a "functional" one. Now included are those individuals previously covered but also those who have a severe chronic disability which:

1. Is attributable to a mental or physical impairment or a combination of mental or physical impairments;
2. Is manifested before the person attains age of 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity -- self-care, receptive and expressive language, learning ability, self-direction, capacity for independent living, and economic self-sufficiency; and
5. Reflects a need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

The developmental disabilities legislation is intended to serve those whose handicaps are so complex that traditional, separate, limited services, by definition, will almost always be inadequate. This law also establishes a "Bill of Rights" which, among other provisions, requires that individuals protected under this legislation be placed in community facilities.*

Technology is implicity important under the developmental disabilities legislation for two reasons. First, in the identification of those persons eligible for services, the assessment of functional limitations is one which requires sophisticated and exact technology. The change from the categorical to the functional definition reflected, among other concerns, a belief that the old process of labeling individuals had often been slipshod and inaccurate. The functional definition is intended to pinpoint the precise nature of problems which justify the kinds of services ordinarily associated with developmental disabilities. Second, technology is important because of the major emphasis toward community placement. This can happen only if there is very significant support systems available to enable previously institutionalized individuals, and others, to remain in normalized environments. Of special importance are those services in technolgies which habilitate individuals in ways which are intended to fulfill individual ability and which do not represent sterotyped attitudes towards disabled people.

A Note on Social Security

It is beyond the scope of this report to go into a complete description of the interaction of the Social Security system and the handicapped entitlement laws discussed above. However, it is significant to note that such provisions of the Social Security Act as Title XIX are, in the opinion of many handicapped people and their advocates, being distorted to support systems for continued institutional placement of severely disabled individuals. This is especially important to those individuals who are classified as developmentally disabled. In 1971 amendments to Title XIX allowing the use of those funds for Intermediate Care Facilities, the legislation specified that independent professional review mechanisms and periodic on-site inspection systems should be in place prior to admission review in all such facilities to determine the appropriateness of institutional placement (42 U.S.C. 1396(a)(31)). The legislative history indicates that Congress wanted to assure that each individual was in "the right place at the right time receiving the right care" (117 CONG. REC. 44721, December 4, 1971).

Critics charge that Congress had initially intended that these funds be used to provide rehabilitation, education, and training services to enhance the capacity of mentally retarded people, and later expanded their use to include other groups of developmentally disabled individuals in order to help them become independent and self-sufficient. Instead, these funds are now being used to support medical institutions. This support continues despite clear findings that such institutions are not an appropriate way to provide services.

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* See the concluding section of this report for a discussion of the *Pennhurst* decision on this legislation.

Conclusion

This section has attempted to outline several provisions which are essential in the Federal scheme creating entitlements for handicapped individuals. It has further attempted to show the explicit and implicit recognition of the role of technology in the practical application of those laws. A pattern is clear from legislative history: Congress initially said very little about technological problems inherent in these reforms, but that in later years both recent legislation and regulations promulgated by agencies charged with enforcement of the laws, have clearly recognized an important role for technology in establishing these rights. Such laws as the Rehabilitation Act and the Architectural Barriers Act initially ignored technological questions. However, amendments to these laws, as well as regulations implementing them, acknowledged a major role for technology.

The significance of this finding for the Congress is that in future legislative changes the role of technology should be considered in several ways. First, to the extent that implementation is invariably tied to technological advances (such as the removal of architectural or transportation barriers), Congress should make clear provisions for these needs. This may become especially relevant in the next 12 months as Congress considers reauthorization of the Rehabilitation Act. Second, to the extent that agencies and entities outside the federal government are required to comply with various laws, Congress should give careful consideration to providing resources and technical assistance to aid with those problems. This is essential, at least partially, to prevent some of the backlash which has emerged toward recent laws and which will be considered later in this report. Congress need not provide solutions for every problem, or even foresee all of them; but it must convince the private sector and units of State and local government that effective and useful assistance is available. Third, to the extent that legislative reforms indirectly involve technology (such as with independent living under Title VII of the Rehabilitation Act and the Development Disabilities Legislation), Congress should establish flexible mechanisms which can study the technological problems that emerge. The results of these studies can then be reported to Congress for additional action.

The existence and implementation of rights cannot be equated with technology. We cannot wait for technological solutions before we begin establishing rights. However, enforcement of civil rights is closely tied to technological solutions. There must be an acknowledged relationship between technology and the laws written on paper.

2. THE SITUATION IN MICHIGAN PRIOR TO THE FEDERAL LEGISLATION OF 1970

The Mental Health System as a Primary Technology to Serve Some Handicapped Individuals

Before the mid 1970's, a principal part of the public service system for handicapped individuals centered on mental health. Mental health legislation, and the system it authorized, served not only mentally ill, but also mentally retarded and some physically disabled groups, such as those with epilepsy. The placement of such authority in the mental health system had three consequences. One was that it fostered the "medical model" of services to disabled people, thus also reinforcing the notion that disability was an illness, the remedy for which must focus on curing an individual or ameliorating a problem. Second, placement of service responsibility in the mental health system continued the isolation of disabled people from the rest of society and strengthened the patterns of segregation which have characterized their lives. Third, the choice of mental health as a primary service system had a consequence of placing disabled people in a network which, most often, did not reflect a concern for civil rights of clients and patients. It was, in effect, a paternalistic system which justified its existence principally by the benefits asserted to acrue to individuals placed under its jurisdiction.

Prior to 1974, when the Michigan Mental Health Code (hereafter MMHC) was amended, the principal concerns in the law were such questions as State and county financial responsibility for services; guardianship of mentally ill and mentally retarded persons; family financial liability for mental heatlh services; and such criminal law issues as the transfer of prisoners from prisons to hospitals, standards for determining incompetence to stand trial, and the standards for ascertaining the defense of insanity to crimes. After the reforms in the mid-70s, concern shifted to appropriate admission and discharge procedures for mentally ill persons; distinguishing between admission and discharge procedures for mentally retarded individuals; establishment of guardianship for mentally retarded individuals under limited circumstances, and the establishment of an office of recipient rights of mental health services.

One irony of the previous mental health legislation in Michigan was to allow the involuntary sterilization of persons with epilepsy. While that provision was repealed in 1974, several other parts of the present MMHC deal with specific clinics and of services for individuals with epilepsy. It is apparent that the MMHC's earlier classification of individuals with epilepsy and mental health services had a detrimental and stigmatizing effect on those persons who may not have any mental disability at all but who were so classified because their physical handicap originated from neurological problems in the brain. The legislation's continued inclusion of some services for persons with epilepsy in the MMHC may, inadvertantly, continue this misguided tradition.

The hallmark of the system of services for those individuals entitled under the mental health legislation was its separation from the community. Perhaps part of the motivation for separate services was a human desire to see that individuals in need of special care received some kind of shelter and treatment. In many cases, hospitals were better than the neglect which disabled people ordinarily found in life. Connected with that, however, was another motive: to remove those people who were considered threatening from the presence of non-handicapped people. For at least a century, in Michigan and elsewhere, institutions served the purpose of conveniently keeping handicapped people out of sight.

The Special Education System and Legislation as a Primary Technology to Serve Other Handicapped Individuals

Prior to the Federal changes mandated in the early and mid 1970's, the second major service system for handicapped individuals, apart from Mental Health, was the public education system. These services were provided primarily through separate special education systems. The special education system that existed at that time was marked by three major characteristics: isolation of the students; discretion in deciding what, if any, special education services would be provided; and lack of due process protection for handicapped children and their families.

The early special education system that existed in Michigan operated the way that it did because of certain underlying assumptions about the nature of disability. These assumptions were not unique to the special education system in Michigan or elsewhere; indeed, they are characteristic of our society's general attitude toward disabled people. However, because they are so well illustrated in the education system, this seems to be an appropriate point to discuss them.

There have been two mistaken views regarding the complaint by handicapped persons that they were suffering discrimination. One has been that the problems of handicapped people do not result from discriminatory acts susceptible to legal remedies. Rather, the argument goes, the problems result from conditions imposed accidently by nature, quite distinct from so-called "socially caused" handicaps as racism. (See, Developments in the Law-Equal Protection 82 Harvard Law Review 1069, 1189, 1969). Underlying this view is an attitude that the best that can be done for handicapped people is to see that they are taken care of. If there is to be any equality for handicapped individuals in this view, it is the beneficient paternalism which hopes to protect them and allow them to live, as one writer put it, "in seclusion and with as little pain or discomfort as possible." (Comment, The Forgotten Minority: The Physically Disabled and Improving Their Environment, 48 Chicago-Kent Law Review 215, 219, 1971).

It is, of course, a mistake to regard many handicaps as conditions accidently imposed by "nature." There is nothing natural about paraplegia resulting from a war wound, or a disabling occupational disease resulting from nonenforcement of health and safety legislation, or even a crippling birth defect resulting in social conditions which lead to malnourished, expectant mothers. The very existence of some handicaps is as much the result of deliberate social policies as "separate but equal" school systems are the result of such policy.

A second mistake in this general societal view toward disabled persons, exemplified in the special education system in Michigan, is that the discrimination they faced, while it may lend itself to legal remedies, was unintentional and the result of oversight or thoughtlessness. Proponents of this vew would argue that a great deal of progress will occur merely by education and by increasing awareness of the public to the difficulties of handicapped persons. (See, Hearings on H.R. 6589 and S.222 Before the Subcommittee on Public Buildings and Grounds of the House Committee on Public Works, 90th Cong., 2nd Sess. 1968). One can acknowledge the great indifference to the needs of disabled people which has existed, as well as the need for education, and yet remain equally convinced that much of the discrimination against handicapped people is intentional and purposeful.

Disabled people, like racial minorities and alien groups have been stigmatized as inferior, treated as social outcasts, and invested with sub-citizen status. (See, Kriegel, Uncle Tom and Tiney Tim: Some Reflections on the Crippled as Negro, 38 American Scholar 412, 1969). This discrimination is obviously similar to that faced by women and by such minorities as blacks and aliens. The record of American society in the treatment of handicapped persons is the history of unequal treatment rendered to them solely because of their handicaps, a history of stigma, isolation and discrimination inflicted upon them solely because of their status, and a failure of the politicial process to respond appropriately to their situation.

As noted above, one major characteristic of the old special education system in Michigan was its isolation. Behind the demand of handicapped people for integration is the desire to have choices open to oneself and alternatives available. Integration means, above all, the knowledge that one can move throughout one's society. Handicapped people have been considered a separate class and, because of such separate facilities as schools and rehabilitation institutes, have been encouraged to interact only with others of the same class. This segregation has provoked and perpetuated a reaction among non-handicapped people that handicapped people are inferior with no opportunity provided to handicapped people to demonstrate their actual capacities. Even when this prejudice is camouflaged as protective legislation, it is no less pernicious in its effects. The nonhandicapped are able to avoid contact with handicapped persons, and thus reduce tensions frequently caused be encounters with handicapped persons (Safilious-Rothschild, The Sociology and Social Psychology of Disability and Rehabilitation. pp. 110-111, 1970).

The segregation of handicapped people has two consequences. One is that the fears of nonhandicapped people about handicapped people are reinforced. The psychologist, Beatrice A. Wright, has cited studies which indicate that fear is often a reaction to persons with handicaps. This fear frequently springs from ignorance and a lack of contact with handicapped people; it is, essentially, a fear of the unknown. But once handicapped people are integrated into social settings, the fear and discrimination decrease and they are accepted as persons (Wright, Physical Disability: A Psychological Approach, pp. 254-260, 1960). Other social scientists have confirmed the finding that attitudes toward disabled people change with increased interaction between them and nonhandicapped individuals. (See, Yuker, Block, and Campbell, A Scale to Measure Attitudes Toward Disabled Persons, 1960). Thus, one of the consequences of segregation is that nonhandicapped persons are deprived of the opportunity to grow out of their own prejudices and fears.

There are consequences also for handicapped persons, of course. There is a stigma inherent in a handicap and this stigma interferes with the efforts of handicapped persons to integrate themselves into social life. Erving Goffman, the sociologist, in his famous study, Stigma: Notes on the Management of

Spoiled Identity (1969) has written that the consequences of stigma is "the reduction in our minds from a whole and usual person to a tainted, discounted one" (p.3). Stigmatized persons face ostracism, feelings of inferiority, and the tendency by so-called "normals" to "impute a wide range of imperfections on the basis of the original one" (pp. 5, 6, 13). The cost of segregation of handicapped persons is a sense of inferiority which frustrates the desire to accomplish change and destroys the will to overcome separation.

The second major element of the Michigan special education system before the reform of the 1970's was the discretionary nature of the services which were provided to handicapped individuals. While education generally had been determined to be a right, and education provided in racially integrated settings had received constitutional protection, no such mandate existed for the education of handicapped individuals. The effects of this discretion were manifest in several ways. First, the State could decide whether or not it wanted to provide any kind of special education. In connection with this, considerable latitude was given to local school authorities to determine what, if any, services they would provide for the handicapped children. Second, the type and nature of educational programs was discretionary. The State might, and could, conclude that children with certain kinds of handicaps (such as those who were blind or deaf) must attend special schools at long distances from their homes. It could also decide that certain children would receive only very limited special education programs in their local districts. Some children, especially the severely handicapped, could be completely excluded from special education programs as "uneducable."

The discretionary element in the earlier special education system was manifest in another important way. That was in the funding of special education programs. The State was completely free to decide what level of funding would be appropriate for these programs. There was no minimum level that could be demanded because of the nonmandatory nature of the program. As noted earler, in the first part, and as will be discussed further, one of the most significant policy changes in programs for handicapped people during the 1970's was the shift from the discretionary principle to the mandatory principle. Indeed, the law which Michigan enacted in the 1970's to provide a better education system is popularly known as the Mandatory Special Education Law.

The third major characteristic of the old Michigan special education system before the enactment of reforms was the absence of due process. Generally, it was very difficult for handicapped students to question or challenge the basis of decisions that were made about them. Courts were reluctant to interfere with the decisions of school officials, and to the limited extent that litigation did occur, the courts were often inclined to defer to the decisions of the administrators. The absence of due process reinforced the segregation of handicapped individuals because it allowed decisions to be made about them on mistaken and illfounded assumptions which a properly conducted due process hearing might have exposed. The absence of due process also reinforced the discretionary element of services because no forum existed to demand accountability of public officials.

Due process is important because an essential element of the movement for civil right among disabled persons is that the abilities of handicapped persons to participate in certain activities and to accomplish certain tasks must be determined on the basis of specific capacities of the individuals involved and not on the basis of sterotyped, categorical judgments about the handicapped class to which those individuals belong. A corollary of this principle is the legal rule that handicapped persons may not be subject to an "irrebuttable presumption" that they are unable to perform certain tasks. They may not be denied the opportunity to show what, in fact, they can do. The due process principle, of course, is not limited to the problems of handicapped individuals. For example, in an early important case, the Supreme Court struck down a public school system's policy that required pregnant teachers to take maternity leave at a certain time, without any determination of the individual teacher's capacity to work beyond that point. The Court concluded that such a rule created a presumption that women could not work when they were pregnant on the basis of sexual sterotypes (Cleveland Board of Education vs. LaFleur, 414 U.S. 632, 1974).

The due process principle in education applies not only to handicapped students, but sometimes to handicapped teachers seeking to work in the public education system. For example, in one case, a blind graduate of Temple University, certified to teach English in Pennsylvania, sought a teaching position in the Philadelphia Public School System. The initial reaction of school officials in 1969, was that blind teachers could only teach blind students (who apparently were segregated in a separate school) and that, in no event, could a person having what the school system considered a "chronic or acute physical defect" take the required Philadelphia Teachers Examination (Gurmankin vs. Costanzo, 411 F.Supp 982 (E.D. PA. 1976). The first court to hear the case concluded that the plaintiff's consititutional rights had been violated because this school system had deprived her of the opportunity to present evidence of her qualifications. The teacher was subsequently ordered placed in an appropriate teaching position, with seniority and back pay.

The due process principle, like many important legal principles, is clear. However, it may not always be easy to apply in practice. Nevertheless, there will be at least an opportunity to combat the pre-conceived, mistaken ideas about the abilities of handicapped persons. It is the false notions and groundless fears about handicapped persons which are greater obstacles in life than the actual limitations of a handicapped.

An international group of experts convened by the United Nations to study problems of architectural barriers to handicapped persons concluded that, in addition to the physical barriers and construction, the "social barriers we have evolved and accepted against those who vary more than a certain degree from what we have been conditioned to regard as normal "were as serious as the physical barriers. This panel concluded, "More people have been forced into limited lives and made to suffer by these manmade obstacles than by any specific physical disability." (Barrierfree Design: A Report of a United Nations Expert Group Meeting, p.3, 1975).

Vocational Rehabilitation as a Primary Technology to Serve Other Handicapped Individuals

The third public system in Michigan, prior to the 1970's, to serve handicapped people was vocational rehabilitation. This system was established, in conjunction with Federal mandates existing since the World War I era, to enable handicapped individuals to earn a gainful living. Vocational rehabilitation is intended, and has always been intended, primarily as a program to put handicapped individuals to work.

In some respects, this system may be compared to the preexisting special education system in that it embodied some degree of discretion and lack of substantial due process guidelines. The discretion was not as broad as public education because the mission of the rehabilitation program was fairly specific: once individuals were determined to be capable of earning a living, they were entitled to services. Moreover, there was a flexibility in the system which often inured to the benefit of disabled people because the agency had discretion to establish innovative rehabilitative programs for clients to follow. The absence of formal due process procedures was often mitigated by the fact that clients felt that counselors and other persons in the agency were working to their best interest and because the relationship with the agency was often temporary. Once an individual was determined to be employable, that person would leave. While clients might return, in some cases, there was not the extended involvement with clients that the public education system had. Hence, mistaken decisions about the education of a handicapped individual which might have lifelong effects because of the absence of due process in public education were not as serious in vocational rehabilitaion because of a number of check points at which clients could enter and leave the system. At the same time, a major problem with vocational rehabilitation, not only in Michigan but throughout the United States, is that its narrow focus on employability ignored other important aspects of services for handicapped people. To some extent, these problems may be ameliorated by the establishment of independent living programs, at least for severely disabled adults.

The Situation of Handicapped People Outside These Systems, Laws, and Technologies

Prior to the Federal reform of the mid 1970's, the general experience of handicapped individuals was one of living without any significant public support. While there were limited subsistence-oriented programs, such as Social Security and general public assistance programs, the principal responsibilities for overcoming the barriers which disabled people faced rested upon the individuals themselves and their families. As noted earlier, one of the major implications of the changes which took place in the last decade was that there was a marked change from the old passive policy to one of a more active affirmative policy. This is evident from the change in mental health services from those which were solely custodial to concern about individual rights and community placements; in the change in the public education system from discretion and haphazard policies to firmly establish program requirements; and in the shift in rehabilitation from vocational concerns only to programs fostering independent living. But before these changes, disabled people in Michigan who were not served by one of the systems enumerated above found themselves with very little assistance.

One illustration of a group in Michigan which often fell outside of the ordinary service systems was developmentally disabled adults. In 1976, the State Senate created a special committee to study the problems and needs of adults with developmental disabilities. The resolution creating this body stated:

> The Department of Mental Health has identified over 9,000 mentally retarded persons 26 years of age and older residing in the community, and over 3,000 persons 26 years of age and older living in State institutions for mentally retarded people. (Senate Resolution 518, 1976).

This inquiry was predicated upon the need to serve those developmentally disabled individuals graduating from special education who, upon graduation or age 26 (whichever occurred first), were excluded from further educational and day programming. The legislature recognized that there were insufficient programs and services in the areas of education, special day programs, vocational training for employment, housing, health, and transportation for these adults.

The report of the Senate Committee, commonly referred to in Michigan as the Snyder Report, first recognized that there had never been an appropriate needs assessment study of this group of individuals. It recommended that such a study be made. Second, the Committee recognized the need for a fixed and accessible point to provide information, referral services, and entry into a service delivery system. Other recommendations centered upon the capacity of the State to encourage employment, either directly through contracts or indirectly through tax policies; expansion of the capacity of the State Department of Social Services to provide better foster care homes and to facilitate the operation of those homes without undue administrative burdens; and the establishment of adult developmental programming, whereby individuals leaving the public education system would be evaluated in terms of a complete program of work and training services.

A second legislative committee, the Joint Special Committee on Developmental Disabilities, was convened a year later to make further recommendations and to evaluate the progress made by the earlier committee. Its report, issued in December 1978, noted very limited progress on some recommendations, but reiterated that a better service delivery system for adults with developmental disabilities is needed. The report concluded that the major issues for that session of the legislature in providing services to developmentally disabled adults was the "coordination of existing resources to provide the greater service per dollar." (Report to the Michigan State Legislature, p. 16, 1978). The problem recognized in Michigan of uncoordinated services reflected a growing concern across the nation in the delivery of social programs. The former Commissioner of Rehabilitation Services has commented on the problem of fragmented, sporadic services for all handicapped persons:

> There is no system for the delivery of a continuum of services to disabled people in America. There are scattered programs, which, with varying levels of adequacy, address different needs of these people . Some of these are directed to the special needs of disabled people such as rehabilitation services, and SSDI. Others are not disability-specific such as Title XX and food stamps. Since there is no coordination pattern, or plan relating to the provision of services, the needs of the whole individual are nowhere considered, and as a result there are both major gaps in services and pervasive, unmet needs. (Humphreys, "Past Success and Future Potential: A Federal View of Rehabilitation," American Rehabilitation, p.4, July/August 1980, emphasis in original).

Additional national recognition of the gaps in services for severely handicapped individuals arose from the effort to establish independent living programs. At least six services are identified as deficient enough to justify more active independent living programs. First are advocacy services that attempt to acquire for disabled persons various rights and entitlements. Second is "peer counseling" intended to foster more assertive behavior in an unaccommodating social and economic environment. Third are attendant care services that assist disabled persons in personal hygiene and housekeeping activities. Fourth is the removal of architectural barriers. Fifth is adaptive housing and sixth is adaptive transportation. (DeJong, "The Movement for Independent Living: Origins, Ideologies, and Implications for Disability Research," p. 52, 1979, footnotes omitted).

The findings at the national level were reiterated in Michigan not only in State reports, but in specific local studies which verified the problems faced by individuals who could not secure services from the established systems. A study prepared in 1976 by the Kalamazoo Association for Retarded Citizens undertook to develop a comprehensive plan of serving mentally retarded citizens. This sketch of the typical mentally retarded individual in the county vividly illustrates the problems of developmentally disabled adults throughout the State:

> A profile of the "average" mentally retarded person in Kalamazoo County as portrayed by our sample might be: A 22-year-old mildly retarded man with no other associated impairments, who is single and living with his parents in the city of Kalamazoo; he is enrolled in special education in a regular school and has been diagnosed as mentally retarded by school evaluation and a physician; his parents are seen as legally responsible for him, although they are not legally appointed guardians; it is not known whether he is receiving any financial assistance; his future for education and training as an adult is unknown. (MR: The Future is Now, p. 9 1976).

A second study done in Michigan identified some existing problems in individual areas: lack of transportation and appropriate Adult Basic Education programs, adult services and the need for community placement funds. (Report on the Regional Interagency Coordinating Committee System in Michigan, n.d.).

Efforts in Michigan to Establish Entitlements for Handicapped Individuals Independent of Federal Mandates

In the three significant pieces of legislation, Michigan has attempted to provide entitlements on behalf of handicapped person which may reflect, but are independent of, the federal legislative mandates in rehabilitation and eduation. One law, the Community Placement Act, permits the establishment of group homes for handicapped individuals in residential areas. This legislation was necessary because group homes often met successful legal opposition on two grounds. One was that restrictive covenants in individual deeds prohibited property owners from selling their homes to a group of unrelated individuals. The original intent of these restrictive covenants was to protect the residential nature of neighborhoods and to prevent them from becoming commercial; however, in recent years such agreements have been used to exclude group homes and community living facilities. The second ground of successful legal opposition was that many communities had legislation which zoned certain areas for residential purposes only and, explicitly or implicitly, prevented the establishment of group homes in those areas. The State Community Placement Act preempted both private and public prohibitions of such agreements and made it possible to establish group homes in many areas where they had been prohibited before.

The second independent Michigan legislation was what is called the Handicappers' Civil Rights Act. The term "handicappers" is unique to Michigan. Individuals in Michigan rejected both the terms "disabled" and "handicapped" as either stigmatizing or historically prejudiced, on a rational similar to that under with blacks have rejected the terms "Negro" and "colored." "Handicappers" was chosen as a dynamic term and the disabled population got the term written into State legislation.

The Act accomplishes several purposes. It establishes, as a basic civil right, the opportunity to obtain employment, housing and other real estate and to make full and equal utilization of public accommodations, public services, and educational facilities without discrimination because of handicap. It gives to the Michigan Civil Rights Commission the power to enforce this legislation. Additionally, agrieved persons have the opportunity to take cases directly into court.

It should be noted, however, that there may be arguments against the enactment of a special civil rights law for handicapped persons. Michigan already has a general civil right law which prohibits discrimination on such grounds as race, sex, and religion. Some States have extended legal protection to handicapped individuals simply by amending existing civil rights legislation covering those other groups. There can be several advantages to this approach. One is that the civil rights of handicapped individuals are recognized as equal to those of other minorities, which have been established in law. In short, handicapped people are brought under the umbrella of protection established for those other groups. Additionally, the legal precedents that have been developed for those other groups may be extrapolated and applied by implication to the groups. An example of how this may occur is that sterotypes on the basis of a characteristic, such as sex, which are deemed illegal are similar to sterotypes on the basis of handicap; cases challenging one kind of discrimination may be cited as precedent for another kind of discrimination. A third advantage is that by amending an existing civil rights law the enforcement powers of existing agencies can be utilized to enforce discrimination against this newly protected group. The experiences of investigators can be brought to bear upon discrimination problems of handicapped people.

In defense of the Michigan approach of enacting a special law, a number of points can also be argued. To the extent that handicapped individuals need "accomodation" to overcome disabilities, a special law may emphasize the particular needs of the group and direct special attention by court and administrative agency to those problems. Additionally, because the class of protected individuals is rather uncertain it may be better to have a law which extends coverage to them separately from one which covers easily identifiable groups. Third, Michigan has assigned enforcement powers to its Civil Rights Commission and thereby brought to bear the expertise of that agency in the enforcement process on behalf of handicapped people.

One significant accomplishment of the Michigan law is that it reaches deeply into the private sector where the Federal legislation would not apply. For example, under the Rehabilitation Act employment discrimination is prohibited only by employers who have either federal contracts or Federal grants. Under the Michigan Act all employers who have four or more employees or who are contractors or sub-contractors for a State or governmental entity must refrain from discrimination. The law prohibits discrimination in employment because employees require "adaptive devices or aids" (reasonable accommodations). Additionally, it applies directly to labor unions.

The public accommodations provision of the law requires that handicapped individuals be given "full and equal enjoyment" of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation if the individual's handicap is unrelated to that person's capacity to utilize it.

Furthermore, the Michigan Act prohibits discrimination on the basis of handicap in housing. It is aimed at prohibiting the kind of discrimination that is often found in discriminatory housing practices on the basis of race, sex, or national origin.

This summary of the Michigan Civil Rights legislation demonstrates the similarity between the law and other civil rights provisions. It thereby represents the formal endorsement of the State of the concept of anti-discrimination on the basis of handicap. The significance of this kind of legislation, apart from its intrinsic merits, is that it replaces the traditional apathy found in State efforts to legislate against discrimination on the basis of handicap. The impact of such a law as the Michigan Handicappers Civil Rigths Act is symbolic as well as practical.

The third area in which Michigan moved independently from the federal mandates to provide State legislation pertaining to handicapped rights is in the area of architectural barriers. Michigan's Barrier-Free Design Law makes significant improvements over federal architectural barrier legislation and the provisions of Section 504 of the Rehabilitation Act in combatting barriers. This legislation applies to most public facilities and accommodations, even when State or federal money is not involved in their construction or operation. It applies to new construction as well as renovation of significant projects. A very important difference between the Michigan architectural barrier legislation and the Federal legislation is that Michigan does not follow the American National Standards Institute standards incorporated in the Federal legislation and regulation. Instead, Michigan has developed independent barrier-free design standards which, in the view of many individuals, are better and more descriptive of methods to achieve accessibility for physically impaired persons.

A second significant provision under ther Michigan law is its use of a Barrier-Free Design Board as the primary enforcement mechanism. This board, whose members are appointed by the Governor subject to confirmation by the State senate, is made up of representatives of those significant consumer groups that are affected by the legislation. In addition to representatives of handicapped individuals, there are representatives from the building industry, the building code enforcement authorities, the architecture profession, and the engineering profession. The Board has authority to set standards and to guide public policy in the removal of architectural barriers. It conducts its meetings in public, thereby allowing affected individuals to have significant input into the process.

At the present time, however, there is much dissatisfaction in Michigan with the Barrier-Free Design Board. The Board has been generally lax in enforcement and prosecution of complaints. It is not altogether clear why this is true. In some respect, it may be a political question because certain members of the Board are not anxious to provoke opposition to the law by enforcement which may be considered too vigorous. The delay may also be the result of uncertainty on the part of Board members about their authority to take various enforcement action. Finally, the Board, lacking a consistently trained staff, has had difficulty in administration and personnel matters. For these reasons, it is necessary to say that while the Barrier-Free Design Board is an effective mechanism on paper, the actual enforcement of the law by the agency has been uncertain.

3. MICHIGAN'S COMPLIANCE WITH FEDERAL LAWS

Compliance with Section 504

The first major problem in Michigan in the implementation of the civil rights mandate of Section 504 of the Rehabilitation Act of 1973 was to come to terms with the broad definition of handicapped individuals covered under this legislation. As originally enacted, the legislation protected three main classes of people:

1. Those with a physical or mental impairment which substantially limited one or more major life activties,

2. Those with a record of such an impairment,

3. Those regarded as having such an impairment. (29 U.S.C. 706(7)).

In 1978, Congress amended that definition with special provisions applying to alcoholics and drug abusers. Several observations are now in order about the important definition in the Rehabilitation Act.

First, it is clear that Congress rejected the idea that the definition should include a "laundry list" of disabilities. This was, in all likelihood, a wise choice. Lists almost inevitably fail to specify some group which should be included. Additionally, even when the legislation states that the list is not intended to be exhaustive, courts and administrative agencies are often inclined to interpret them as exhaustive. Thus, one consequence of a list is that it becomes rigid. In novel and ground-breaking legislation, it is often necessary to have a flexible approach to legislation in order to deal with unforeseen problems.

Second, by rejecting the idea of a list, Congress has, however, created a problem in the legislation. Because of the definition's very breath, it can be criticized, and even challenged on constitutional grounds, because of the uncertainty it creates. States and localities covered by the legislation can argue, perhaps persuasively, that the definition is so broad that they are unable to predict who is covered and unable to decide who should be served. In short, by adopting the broad definition, Congress almost certainly made the Rehabilitation Act vulnerable to vigorous criticism.

Third, the legislative definition in the Act indicates an important new approach in attitudes towards disabled people. Congress, in this legislation, began to move away from the traditional "categorical" definition whereby individuals are considered handicapped only if they are able to fit within certain well-defined, and sometime arbitrary categories. These categories, in the past, have almost always been defined in terms of diseases and other medical terminologies. While the first part of the definition, that covering those with limitations that substantially limit major life activities, is probably intended to cover those whom we oridinarily think of as handicapped, the remaining parts of the definition reflect a new approach. Those individuals with a record of a handicap include those who may have recovered from illnesses which are regarded as handicaps, but which provoke prejudice because of stereotypical attitudes toward those disabilities. It may also include those who were once mistakenly classified as disabled, such as individuals categorized as mentally retarded because of racially or culturally disrciminatory I.Q. tests. The third part of the definition -- covers those who may not be handicapped at all in the sense that they are limited, but who, for some reason, are treated as if they were handicapped and encounter discrimination because of that treatment. An example is someone who has a disfiguring facial scar or someone who has a slight limp. For those individuals, the problems may not constitute a real handicap, but they are nevertheless treated as if they were a handicap.

In enacting this broad definition, it is clear that Congress attempted to reach deep and persistent problems about discrimination which could not have been touched by a traditional definition of handicap, particularly one aimed toward diseases or other categories. The legislation implicitly States that it is attempting to root out prejudice based upon mistaken attitudes. In one view, this is a commendable approach because of the way that it offers the law's protection to a large class of individuals in need of such help. At the same time, it presents problems for those recipients who are called upon to comply with the law because they probably do not have the data necessary to determine the size of the protected population and what their obligations to that group are.

The difficulties in ascertaining the dimensions of the protected group would be substantial even for those who are within the traditional category of disability. We have never had good population data on disabled people. But the problems are even greater in trying to determine those who are discriminated against because of records or because of perception. Perhaps the most equitable approach to the problem is to suggest to States and other recipients that they use the best data available on their handicapped population and deal with such other questions as discrimination on the basis of record or perception on a case-by-case basis. It is clear that the latter parts of the definition are intended to eliminate discrimination on the basis of the stereotypical attitudes. In order to implement these parts effectively, States may not have to deal with them until the individuals claiming discrimination have invoked them. In any event, the States should not allow this broad definition to serve as an excuse for delay in the implementation of civil rights.

A fourth significant point about the definition is that, because of its breadth, it was immediately apparent that there would be a need for administrative agencies to specify the law's coverage. This task was accomplished by the former United States Department of Health, Education, and Welfare in regulations promulgated on May 4, 1977 which, among other parts, established a more precise definition. Section 84.3 (k) provides instructive information about those groups the department regards as appropriately covered. (45 C.F.R. Part 84). The regulations, consistent with the legislation, do not provide a list of specific handicaps, but do list disorders and conditions which are considered "impariments." Such systems of the body as neurological, musculskeletal, cardiovascular, and respiratory are covered, as are special sense organs. The analysis accompanying these regulations notes that orthopaedic, visual, disease and conditions, speech and hearing impairments, as well as cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation and emotional illness are included.

Section 504: Transportation

Michigan's efforts to comply with Section 504 are evident in many different ways. One of the most important and controversial has been the requirement to provide accessible public transporation services. While this is not the only major effort to comply, it illustrates many of the difficulties which a State faces in meeting various requirements. In Lloyd v. Regional Transportation Authority, (548 F. 2d 1977 (C.A. 7 1977), a Federal appellate court in Chicago had held that Section 504 required that affirmative efforts be made by public transportation authorities receiving Federal funds to provide some degree of accessible service. The Lloyd case did not specify the type or degree of accessible service. In 1975, the Michigan Paralyzed Veterans of America and other consumer groups brought suit against Federal and local transportation authorities to prevent the purchase of inaccessible buses by the Southeast Michigan Transit Authority in the Detroit area (Michigan Paralyzed Veterans of America (P.V.A.) v. Coleman, 415 F.Supp. 7, 1977). The plaintiffs based their lawsuit not only on Section 504, but also upon Section 16(a) of the Urban Mass Transportation Act, (49 U.S.C. 1612(a)). and all other related Federal laws. Additionally, these plaintiffs based their actions upon a Michigan statute which required local transit authority purchasing buses with State money to secure only accessible buses (M.C.L.A. 247.660b).

The goals sought by the plaintiffs was to prohibit the purchase of inaccessible mainline buses and to require the purchase of a vehicle known as Transbus, an accessible, ramped vehicle which would be accessible to wheelchair users. The Federal, State and local officials defending this challenge to Michigan's urban mass transportation system asserted that Section 504 required only "special efforts" in serving elderly and handicapped persons. The special efforts argument was based upon regulations promulgated by the Federal Department of Transportation in 1976, which will be discussed below.

The Michigan P.V.A. legislation is still pending. The court has not entered a final judgment and the parties are attempting to negotiate a settlement. Because of the recently announced plans by the Administration to seek legislation granting local transit authorities greater discretion in the design of transportation for handicapped people, it appears that one of the tactics in the Michigan transportation litigation is to delay final judgment until the legislative issues are resolved, most likely in favor of the defendant.

However, the regulations referred to in this case illustrate some of the complexities which Michigan officials have to face in complying with Federal transportation accessibility regulations. The regulations existing at the time of the Michigan decision and, to some extent, still in effect had three major requirements:

1. The urban transportation planning process had to exhibit satisfactory special efforts in planning public mass transportation facilities and services that could be utilized by elderly and handicapped persons.

2. The annual element of the transportation improvements program submitted after September 30, 1976 had to contain projects or project elements designed to benefit elderly and handicapped persons, specially including wheelchair users and those with semi-ambulatory capabilities.

3. After September 30, 1977, substantial progress had to be demonstrated in implementing previously programmed projects.

Most of the efforts in Michigan centered upon the development of special transportation system, or mini-buses, designed to serve disabled people alone. Objection to these special transportation systems centered upon the fact that they often provided inadequate transportation services and were stigmatizing because of their segregative operation. On their face, the regulations required that the special efforts had to result in genuine, good-faith progress in planning services for wheelchair users and semi-ambulatory handicapped persons that was reasonble by comparison with the service provided to the general public. Additionally, a significant fraction of the actual transportation needs of these persons had to be met in a reasonable time.

The regulatory material also provided that certain levels of effort had to be met in order to be considered sufficient for the special-efforts requirement. One way to meet the level of requirement was the expenditure of a specified amount of funds according to a formula spelled out in the regulations, but basically equaling 5 percent of the funds appropriated to a local transit authority. A second example was the purchase of "only wheelchair accessible" new buses until one half of the fleet was accessible. A third example was the provision of a system of any design that would assure that every wheelchair user or semi-ambulatory person in an urbanized area would have public transportation available if requested for ten-round trips per week at fares comparable to those charged on standard transit buses for trips of similar length.

Special, para-transit services were allowed if they met four conditions:

1. The service and vehicles had to serve wheelchair users and semi-ambulatory persons.
2. The service had to meet a priority need identified in the planning process.
3. The service must not be restricted to a particular organization or institutional clientele.
4. Any fares charged must be comparable to those charged on standard transit buses for trips of similar length.

It is obvious that these regulations, while imposing substantial new requirements on Michigan and its local transit authorities, nevertheless gave Michigan a large amount of discretion in choosing ways to provide transportation for handicapped individuals. It was this discretion in the Federal regulatory scheme which the plaintiffs' and the Michigan Paralyzed Veterans of Americas' litigation challenged. They argued that such flexibility was inconsistent with the civil rights mandate of Section 504. Moreover, their efforts to challenge the regulations were supported by evidence about the inadequacies and deficiencies of the para-transit systems in actual operation.

It remains to be seen what the result will be in the Michigan legislation and the degree to which local officials will be deprived of the discretion which these 1976 regulations gave to them. Federal courts have consistently refused to set aside the discretionary elements of the regulations in similar cases brought across the United States. This was the result of, for example, a case in Cleveland, Vanko v. Finley, 440 F. Supp. 656 (M.D. OH 1977), and in Denver, Atlantis Community v. Adams, 453 F. Supp. 825 (D. COL 1978). The deference which courts have shown to the administrative regulations reflects several considerations. First, under the doctrine of "primary jurisdiction," courts traditionally defer to the policies and judgments of administrative agencies which have expertise in complex, technological matters. The rationale for this policy is that before a question is presented to a court for review, the expert agency should have an opportunity to resolve, or at least consider the problem. On this theory, then, in the transportation litigation, the courts seemed to be saying that Federal and local transportation authorities should be given a chance to develop appropriate policies before judicial intervention occurred.

Second, the restrained attitude of the courts reflects a hesitancy to become involved in questions which would require the courts to manage the minute operations of a transportation system. The relief sought by the plaintiff in Federal transportation cases would have required complex, highly detailed decrees directing transportation authorities to do specific things and to be accountable. Courts, generally, are reluctant to do this, especially when there is an administrative agency available which has the first responsibility to oversee details.

Third, the courts were reluctant to become actively involved in the way that plaintiffs sought, because Congress had not spoken decisively about what it wanted. One of the operative terms in Federal transit legislation was "special efforts." However, Congress had made no efforts to define what that term meant. This ambiguity in the statutes may have led courts to believe that Congress did not intend major changes under these provisions. If Congress had given more detailed and specific directions in its legislation, the courts might have been more willing to take a risk in the enforcement process.

Therefore, it would appear that if it were solely a judicial question, Michigan's present operation of its transportation system would likely be held in compliance with Section 504, as well as the other applicable Federal transit legislation.

However, new Department of Transportation regulations, promulgated in July, 1979 may have the effect of removing substantial discretion from Michigan in the planning of transportation srvices for handicapped individuals. Public transit buses purchased after July 2, 1979 must be accessible to wheelchairs. Within 10 years, half of the buses used in peak-hour service must be accessible to wheelchair users, and that part of the bus fleet must be utilized before inaccessible vehicles during off-peak hours so as to maximize the number of accessible buses on the street.

These regulations define program accessibility for a fixed-route bus system:

1. When the system is accessible to handicapped persons who can use steps, and

2. when the system, viewed in its entirety, is accessible to wheelchair users.

The regulations established a 3-year compliance period for fixed-route bus systems. For extraordinarily expensive structural changes or replacements in existent vehicles, the time limit may be extended to 10 years.

Paratransit systems must, in their entirety, be accessible to handicapped persons, including wheelchair users. They must operate enough vehicles to provide service to handicapped people that is generally equal to that provided to other persons. If it is necessary to purchase additional paratransit vehicles in order to meet this requirement, those purchases must be made by July 2, 1982.

If, by July 2, 1982 a Federally-assisted local transit authority has not met the program accessibility it must provide interim accessible transportation for handicapped people who could otherwise use the system if it were accessible. The standards for developing this interim service must be established in consultation with the public and interested handicapped people and their organizations. Local transit authorities are required to spend a minimum amount of financial assistance on this transportation.

Subject to this expenditure limitation (which is generally 2 percent of the money received by the local transit authority from the Federal government) general standards are established to guide the provision of interim service. The service must be available within the public transportation authorities normal service area and during normal service hours. To the extent feasible, it must meet these requirements:

1. It must have no restriction on trip purpose.
2. Combined wait and travel time, transfer frequency, and fares must be comparable to that of the regular fixed route system.
3. Service must be available to all handicapped people who could otherwise use the system if it was accessible, including wheelchair users who cannot transfer from a wheelchair and those who have powered wheelchairs.
4. There can be no waiting list such that handicapped people who have qualified or registered from the service are consistently excluded because of low capacity.

(The requirements described from the final Sectin 504 regulations are summarized from 49 C.F.R. Part 27).

While important elements of discretion still exist, it is obvious that the present rules are much more stringent and have greater mandatory requirements to be met. Additionally, the level of service mandated under both mainline transit service and paratransit service is substantially higher than was previously required or has ever been provided. The regulations have provoked intense criticism of Federal transit policies from State and local governments. As a result of this criticism, legislation was introduced in the last section of Congress which would restore a strong element of discretion to local transit authorities. Essentially, this legislation would allow the local transit authorities to decide to what extent they wanted to provide services by means of special segragated systems as opposed to mainline, integrated systems. The legislation has provoked vigorous comment from handicapped advocacy organizations. Moreover, it seems to be lacking in a substantial factual basis because it fails to discern the greater costs associated with separate, duplicative systems as opposed to accessible mainline systems.

Because of the uncertainty about the future of Federal transportation policies at present, it appears that Michigan's approach right now is to wait until these legislative and regulatory issues have been resolved. It would also seem that time is on Michigan's side in this respect, because it is unlikely that a major civil rights imperative for accessible transportation will come from the present Administration. Nevertheless, to the extent that decisions are now made at the State and local level on accessible transportation, the years of struggle in Michigan by disabled people for some accessible service have prepared them to secure some gains in that local and State political process. While it is unlikely that the major restructuring of the public transportation system which the present Section 504 regulations issued by the Department of Transportation envision will occur, it is also unlikely that disabled people will be left without any kind of accessible transportation. The effort in the next few years will be one of political negotiation and compromise to provide some degree of service.

Section 504: Mental Health

A second area in which Michigan has made efforts to comply with Section 504 is its mental health system. This is in contrast to the efforts made to comply with the transportation requirements, because those requirements are specific and directory, while the concerns about mental health derive from implicit assumptions about Federal policies. The regulations issued by the former Department of Health, Education and Welfare (HEW) did not explicitly address mental health issues, except to mandate that mentally ill persons, persons with histories of mental illness, and those perceived to be mentally ill were "handicapped" within the meaning of Section 504 and the regulations (45 C.F.R. 84.3(k)). The mental health concerns of Michigan in complying with Federal policies also derive from the body of Federal case law established to guarantee certain rights for mentally ill individuals (American Civil Liberties Union, The Rights of Mentally Ill Persons).

In 1980, a special task force coordinated by the Governor's Committee on Unification of the Public Mental Health System made recommendations about the civil rights of mentally ill individuals which reflect both Section 504 and the Federal case law. Three important basic principles were established. First, clients, or client representatives were to have the right to seek and present independent assessment information which must be considered by the public mental health agency as evidence at hearings concerning the client. This obviously reflects the basic due process principle embodied in the HEW Section 504 regulations. Two other provisions also reflect the same concern for due process. Administrative hearings had to be conducted by impartial hearing officers who were not paid employees of the local service providing agency. Finally, notice had to be given of the right to judicial review when administrative procedures failed to resolve conflicts between client and agencies.

An additional recommendation was made that at the time of entry into the public mental health system, all clients were to be informed in language that was understandable to them of their service rights and responsibilities and of existing procedural safeguards. Furthermore, responsibility for enforcement of these procedural safeguards was placed directly on the State Department of Mental Health. Thus, the recommendation was based upon an assumption that a clear assignment of responsibility had to be made at a central location, and must not be allowed to become diffused among local agencies, which might have inconsistent policies.

In this document, the Committee recognized explicitly that clients or their representatives have "the right to question decisions regarding assessment, placement, and treatment procedures that affect assignment and/or attainment of mental health goals." The Report further recognized the need for clearly delineated procedures assuring the protection of client rights, which have not yet been spelled out either in the Mental Health Code or its administrative regulation. The Report condemned "vague language" about the rights to question assessment, placement, and treatment as well as the lack of uniformly applied due process in administrative appeal procedures (Into the 80's: The Final Report of the Governor's Committee on Unification of the Public Mental Health System, p. 22, 1980).

While the connection between Section 504's concepts and due process is quite clear, other parts of this Report implicitly incorporate Section 504's concepts. For example, the Mandatory Mental Health Programs listed and recommended in the Report make evident a desire to enhance the integration of handicapped individuals into communities. Therefore, recommendations are made for client/outpatient services where the degree of need is mild enough to allow intermittent non-residential services that enable mentally ill individuals to function within home, family, and community. Partial day services are also recommended, to be tailored to client need, on the basis of an individual plan of service, and delivered in a setting other than residential or inpatient facilities. The goal of such services is to improve the clients function in the community.

Additionally, a wide range of support services are recommended which may enhance individual development and placement in the community. These services may include such efforts as speech and language therapy, transportation, medical and dental services, special education, developmental and corrective equipment, vocational training, and legal services. (Ibid, p.10). Vocational training is aimed at serving those individuals whose unique needs cannot be served in the ordinary system.

Generally, the services provided through vocational education are aimed at enhancing one of the following areas:

1. Career development
2. Work experience
3. Awareness
4. Placement
5. Counseling
6. Coordination of student educational programs
7. Information and referral
8. Follow-up studies

Michigan's Compliance with the Education for all Handicapped Children Act

As noted earlier, Michigan had established a mandatory special education system in the early 1970's, independent of Federal requirements. While it was an important reform in an archaic system, it failed to provide many of the rights and protections which are now considered intrinsic to appropriate education services for handicapped people.

In implementing the Federal mandate for appropriate education, contained in the Education for all Handicapped Children Act, Michigan was compelled to face a number of questions. One was the extent to which relationships and arrangements in special education involved both the State Department of Education and the State Department of Mental Health in programs which continued the isolation and segregation of handicaped children. To counteract this, it was necessary to consider ways in which to implement integration or "mainstreaming." As the Report of the Ad Hoc Task Force on Special Education stated in July 1977, "General education professionals may not be prepared to provide quality education to the special education youngsters being placed in their classrooms." (Mandatory Special Education in Michigan: Assessment and Recommendations (SI)). This same report expressed concern for potential negative reactions to handicapped children being placed in regular education classes.

Underlying this assessment in the late 1970's, was the concern about the adequacy of the special education delivery system. After six years under the State special education legislation, the report concluded that "both servicers and the served still continued to perceive unmet needs." (S3).

The report then went on to provide an extensive listing of services which were inadequate. Generally, programs and services were held not to be sufficiently available to handicapped persons. Many local school districts were not providing the continuum of programs and services mandated under both Federal and State law. There were insufficient pre-school programs and insufficient prevocational and vocational education programs. Programs at the middle and secondary levels were insufficient within all categories of impairment. Diagnostic, supportive, and consultative services were insufficient, as were appropriate programs for the emotionally impaired, particularly those who were severely emotionally impaired.

Additionally, appropriate program placements were not consistently provided. There were not sufficient programs and services provided for low incident handicapped populations. These students therefore were placed in other existing programs which were not appropriate to their needs. Efforts to integrate handicapped people were inadequate, resulting to some extent from lack of preparation and necessary support services. One consequence of the inadequate integration efforts was that students had to be bussed long distances causing transportation to take extensive time from school programs.

Furthermore, available programs and services were found to be not readily accessible to all handicapped students. Facilities were not physically barrier-free. Classrooms lacked inidividualized learning stations, such as learning areas in classrooms and laboratories. Transportation vehicles were often not accessible to handicapped students.

Other general findings about the inadequacies of Michigan's compliance with the Federal legislation concerned the lack of systematic coordination among providers of programs and services at all levels. Moreover, in-service training was currently so limited and inappropriate that special education and regular education teachers found it inadequate. Finally there was no organized plan for a concerted, mobilized effort to provide effective mainstreaming for individual program needs of special education students (S5-S7).

A unique problem that existed for Michigan concerned the fact that under the Michigan legislation, handicapped individuals were entitled to special education services from the ages of 0 through 25. By contrast, the Federal legislation required programs only for ages 3-18 initially, and later 0 through 21. One recommendation has been that the Michigan congressional delegation seek incentive grants for those school districts offering programs and services to persons above the age of 21. The 1977 report also noted that enforcement was a major problem in the implementation of Federal and State laws, both with respect to noncompliance and with respect to the handling of complaints. No recommendations were made to change the enforcement policy, but they developed better mechanisms to process complaints.

A special problem emerged with respect to the need for individual evaluations. In Michigan, pursuant to the State special education law, the mandate of Section 504 and the Education for all Handicapped Children Act for individualized evaluations of handicapped children was accomplished through what was called an Educational Planning and Placement Committee (EPPC) which set up an appropriate program for each child. The 1977 report found that many districts were not utilizing the EPPC as intended by the law. In the view of the report, the EPPC plan should be binding, should spell out specific matters which must be considered in conference, should advise parents of the right to be accompanied by an advocate or council of their choice, assign responsibility for implementation of the EPPC, and specify grounds for appeal.

Other important recommendations concerned the problems in suspension or expulsion of pupils, definition of certain kinds of handicaps, and appropriate training and professional requirements for persons working in the special education system.

The recommendations made by the task force centered on such problems as regionalization. It was recommended that the State Department of Education take immediate steps to assure the provision of special education services in sparsely populated areas of the State. The second recommendation was that there be an immediate expansion in services for all emotionally impaired and severely emotionally impaired, as well as learning disabled students. The report also recommended that pre-vocational and vocational programs be expanded to accommodate all eligible special education students.

A third important recommendation was the development of a model for the EPPC process to guide local school authorities in providing fundamental due process in the placement procedures. A final major area of recommendations concerned the establishment of appropriate intradepartmental and interdepartmental coordination programs to prevent duplication and to prevent handicapped students from being lost in the system when it was necessary for them to try to find appropriate services outside the established special education service system.

Michigan's Compliance with Federal Rehabilitation Mandates

One of the most significant responsibilities imposed on Michigan has been to develop appropriate independent living programs for severely disabled adults. The dimensions of this program are listed earlier in this report. However, in addition to the kinds of services which now must be offered through the Michigan Rehabilitation Services, and the due process rights connected to those services, Michigan now has important obligations with respect to providing rehabilitation facilities. These facilities very often are sheltered workshops and other training or work places. From 1965 to 1972, Michigan concentrated its efforts on improving rehabilitation facilities which for the most part, already existed. Such efforts as expansion and improvement of physical plants, upgrading and purchasing equipment, and establishing basic programming for clients were the primary concerns. In 1972, 56 separate private and public organizations operated facilities in 66 locations throughout the State. By 1977, there were 72 organiztions operating 101 different sites.

The Michigan State Plan for Rehabilitation Facilities of 1977 listed a number of incentives which led to these changes. Among them were:

1. The Rehabilitation Act of 1973,
2. The creation of community mental health boards which shifted responsibility for community services for mentally ill individuals to localities,
3. The Federal developmental disabilities legislation,
4. The State mandatory special education legislation,
5. Increased awareness among citizens to provide better work opportunities for handicapped persons,
6. A well-informed electorate,
7. Well organized professional and lobby groups.

Beginning in 1973, major efforts were begun in Michigan to focus on the quality of services. These efforts involved facility accreditation, improved evaluation services, development of more client-centered diagnostic programs, better administration of the Association of Michigan rehabilitation facilities, and more cooperative planning between two or more facilities to achieve progress for a given client or groups of clients.

The 1977 Michigan Rehabilitation Facilities Plan then listed a number of issues which were identified, although not in priority order, as program needs identified during the survey. In order to insure better quality service, the State rehabilitation agency adopted the national certification requirements for rehabilitation facilities (p. 50). This had the effect of insuring better services for disabled individuals, as well as enhancing the likelihood of uniform services for individuals in different parts of the State and for those moving into Michigan. Second, the plan identified a need for servcies to severely handicapped individuals and to those with developmental disabilities. In this respect, the plan anticipated the recognition in the 1978 Federal legislation of independent living services for severely handicapped individuals and for a revised developmentally disabilities program. Third, the rehabilitation facilities plan was far-sighted in advocating continued contractual and prime manufacturing work for these facilities as a way of supporting them and making them less dependent upon public funds. In short, this concept envisioned that the facilities would become more self-sufficient. Finally, the plan also coordinated its findings with the recommendations of such reports as the Snyder Report on developmental disabilities which recommend indirect State encouragement of opportunities for handicapped individuals by such action as job placement, State purchase of goods and services, and tax credits. (p. 52-55).

The principle reactions in Michigan to the other provisions of the Rehabilitation Act concerning the administration of State vocational rehabilitation programs are found in the activities of what has been traditionally called the Bureau of Rehabilitation, and is now referred to as Michigan Rehabilitation Services. The rehabilitation legislation imposed upon Michigan consistent Federal guidelines setting forth the requirements of the programs as a prerequisite to receiving Federal financial assistance. The traditional, customary goal of rehabilitation has been to put handicapped people to work. That objective is still the main activity of vocational rehabilitation services under the present legislation.

In two important respects, the Federal legislation has imposed new responsibilities upon Michigan. One area of responsibility is in the establishment of due process rights on behalf of clients. The agencies must now make determinations about clients in ways which are fundamentally fair. Clients must be given the opportunity to contest decisions of counselors or administrators with which they do not agree. They must also be fully apprised of alternatives to rehabilitation programs that are set up for them. They are entitled to know what they can expect from the rehabilitation agency and what their own obligations are in order to fulfill the commitments which the relationship between the agency and the client entails. While the due process procedures emphasize informality in resolution of disputes, they are buttressed by the possibility of formal litigation.

The significance of these due process procedures for rehabilitation agencies is that, once again, the discretion of a public service agency in meeting the needs of handicapped people has been severely limited. In short, accountability is now part of the rehabilitation process. One reaction to the emergence of due process procedures in these agencies was resentment in that some counselors and administors felt that their personal sincerity and commitment about serving handicapped people was called into question. However, as efforts are made to provide such services, there is an increasing recognition that due process procedures are essential to providing good services to clients. Further resentment does continue because clients and administrators often feel that the due process procedures have resulted in the introduction of legalistic approaches to serving clients which is an impediment to flexibility and the design of program. In this respect, the growing legalization of the rehabilitation process continues to disturb many professionals who feel that it encourages unnecessary antagonism between clients, counselors, and administrators. (46 F.R. at 5550, Jan. 19, 1981).

The second area in which the Federal reforms have affected the rehabilitation process has been the encouragement of independent living programs. Independent living centers are increasingly being established as ways to serve severely, usually physically handicapped, adults who do not want to and should not be institutionalized, but who need some kind of extended care in order for them to function and to work. These centers usually are not residential centers. However, they serve as focal points where these individuals can receive supportive servcies such as; attendant care, vocational assistance, transportation, and other assistance designed to facilitate their daily living. They are extremely important, partially because they stand as symbols for the integration of disabled people into community life.

Prior to the 1978 amendments to the Rehabilitation Act, the creation of independent living centers was an optional service at State level. While States still have considerable discretion in what they will do in independent living programs, the 1978 amendments put the authority and support of the Federal government behind these independent agencies. In regulations promulgated on January 19, 1981, the Federal government has imposed upon the States the responsibility to determine the eligibility of individuals for independent living services, to establish a priority of selection to services, to establish individual written rehabilitation programs for independent living clients, and to achieve case closure. Michigan had for several years been supporting a few independent living centers, particulary in urban, academic-oriented areas, such as Lansing and Ann Arbor. Under the new mandate, Michigan will now be able to provide some degree of independent living services in rural areas of the State such as in the Upper Peninsula. At the present time, all independent living services in Michigan are in the early stages, with a great deal of effort being devoted to basic organization and identification of potential clientele.

One significant area in which independent living may positively coincide with the problems of developmentally disabled persons is that as group homes are established for mentally retarded adults, the independent living centers may be able to coordinate their services with such groups. Previously, efforts to place mentally retarded adults in the community were often undertaken without any effort to coordinate with other handicapped groups. This occurred partially because of political differences between groups oriented toward physical handicaps. In the future, it can be expected that there will be coordinated efforts between both groups to find appropriate housing and other service locations for individuals in non-segregated, non-stigmatizing settings which allow for community interaction. This will be especially important as political opposition may emerge from those groups which resent the presence of group homes in certain areas and it becomes necessary for disabled groups to coalesce in order to resist this opposition.

Michigan's Implementation of Developmental Disability Programs

The status of the relationship between Michigan and the Federal government, with respect to developmental disabilities, has become very uncertain because of the Supreme Court's decision in Pennhurst v. Halderman. The Court decided that the Congressional intent of the Developmental Disabilities Assistance and Bill of Rights Act of 1975, as amended, did not make mandatory requirements on the States concerning the placement of developmentally disabled individuals in communities but instead gave the States wide discretionary power over such placement. Partially in response to the Developmental Disabilities Act, Michigan had begun significant efforts to provide mandatory life services for developmentally disabled adults. These efforts were premised on two assumptions: that it was necessary to have comprehensive services for developmentally disabled adults once they left the public education system and that the Federal law mandated better services for adults than was presently being provided in Michigan.

The significance of the Pennhurst case is that the Federal incentive for such services has now been removed. Whether Michigan will continue its efforts without that Federal incentive remains uncertain. A plan now exists in Michigan to begin work on a mandatory life services act. This report will describe some elements of that plan and discuss some of the decisions which have to be made in Michigan in order to provide such services.

As noted earlier, developmentally disabled adults face a confusing, often chaotic, situation in receiving services. The situation at the public school level is significantly different and better coordinated because the school system serves as a focal point for the delivery of services to these individuals. However, because they need a wide range of services, once they leave the public school system, they are unable to identify an entry point into the service system.

Because such legislation would be unique, a special obligation is imposed on its drafters to provide specific guidance about the principles upon which the State plans to implement in mandatory life services for developmentally disabled adults. Courts and administrative agencies will need clear standards governing their administration and enforcement of the law.

Second, it is essential that in developing this law, Michigan provides a statement of basic principles which will underlie the law's operation. For example, the law must clarify the meaning of the "least restrictive alternative" principle in the administration of services and in the placement of developmentally disabled indivudals. In clarifying these concepts, Michigan will be forced to decide to what extent it does support the goals inherent in them. At the same time, while announcing new practices, the legislation should repudiate such past practices as the segregation and isolation of developmentally disabled adults. In short, the passage of such legislation provides, and indeed requires, an articulation of a bill of rights for developmentally disabled adults.

Additionally, the law must provide basic statutory authorization and empower the State to either provide or arrange for the provision of the services needed. In this respect, it must make a fundamental commitment to services which developmentally disabled adults can expect. One of the present problems in the administration of services is that of enabling legislation which specifies responsibility for various departments and agencies. At present, there is no such overriding law which gives authority in the places where it needs to be assigned. In this respect, the mandatory life services legislation can be a mechanism to clarify administrative problems.

A third important phase of the legislation is the definition of individuals to be served. As noted earlier, the present "functional" definition found in Federal law is very broad. In some cases, it lacks precision. There is a serious question in the minds of many administrators about whether the present functional definition lends itself to administration of programs in an efficient way. In the absence of further clarification from Federal agencies, what appears to be happening in Michigan is that programs continue to serve primarily those who were considered developmentally disabled under the traditional "categorical" definition. Passage of new legislation in Michigan would necessitate further standards for deciding who is covered.

A fourth major function of the legislation would be to define services for those individuals who are covered under the act. It would probably be unwise to provide a list of the services, because such lists are almost always inadequate, but nevertheless are treated as an exhaustive list of services. The proper approach for Michigan would seem to be the listing of certain major services (such as respite care) with guidelines for administrative agencies to enumerate more detailed services later. The listing of services must at once be established clearly, so that recipients and providers know what is required, but it also must be flexible so that, as experience dictates, the needed services can be changed. Connected to this, should be a statement of basic entitlements which, based upon the earlier bill of rights established in the first part of the legislation, identifies the type of services individuals are entitled to under the system. This provision would also contain such items as eligibility requirements, particularly where the State decides to limit the services to selected groups or establishes priorities within the developmentally disabled population. Additionally, "individual habilitation plans" or "individual service plans" would be provided so that both client and providers would know what is expected and what is to be included in services or habilitation.

Finally, the mandatory life services legislation should provide for a dispute resolution process whereby clients are entitled to due process. Issues involved here might concern basic eligibility, type of services, and quality of services. The dispute resolution mechanism would be similar to that already established in public education, rehabilitation, and mental health.

Financing Entitlements for Handicapped People in Michigan: Problems Faced by Local Government

The problem of financing these services and implementing the rights connected with Federal entitlements for handicapped individuals is a complex one. Two topics may serve as examples of what problems arise when a community such as East Lansing, Michigan and the surrounding three country metropolitan area face when implementing some programs. These two areas are special education and mental health services.

A 1977 report dealt with some aspects of the problems in financing special education. Two major issues existed. One was that local and intermediate districts claimed that both State and special education tax levy receipts were not adequate to cover the cost of mandated programs. Second, local and intermediate school districts claimed that the increasing cost for special education had to be supported by general operation revenues at the expense of other education programs. Connected to this issue was the difficulty of record keeping which would be required to verify the time that students spent between regular and special education classes. Moreover, Michigan had a school milage system which favored the capacity of wealthy intermediate school districts to support those expenditures not reimbursed by the State.

Because of the high standard of living in East Lansing, it is in somewhat of a better position than rural districts in the north part of the State. There is a second reason which also favors such districts as East Lansing. Under State law in Michigan, local school districts receive 100% reimbursement for the cost of educating nonresident handicapped children. Thus, students sent to special schools or to programs existing in the regular schools that are unique, may bring with them substantial State money to a district. A well-developed education system, such as that in East Lansing, may very well attract students from outside the district, thus bringing in additional money. Moreover, districts which serve institutionalized children who are located within their district may treat those children as nonresidents. The district are thus entitled to substantial State revenue for that reason.

A question exists about the equity of this procedure. Is it discriminatory to provide 100% to the districts for the nonresident children when resident students are not reimbursed to that extent? One result of this is that there is a possibility that the non-resident children will receive better programming because the school district is not as careful about spending money (Mandatory Special Education in Michigan: Assessments and Recommendations, 1977, p. S11-S12).

With respect to mental health services, since the late 1970's Michigan has moved toward establishing greater authority and autonomy in local communities for the administration and implementation of mental health services. The 1980 Governor's Unification Report, previously cited, recommended that "the single point of responsibility is to be located in the community." (p.5). Several recommendations were made with respect to State-local relationships in financial management. First, it was recommended that State mental health authorities and local mental health boards develop a single accounting system for use throughout the system. At the same time, it was recommended that the local authority should have responsibility and authority to manage its own budget. Second, a recommendation was made for facilitation of intercounty billings in which the State Department of Mental Health would take primary responsibility for working out this system and for making sure that candidates were appropriately reimbursed.

A third aspect of the financing situation affecting communities in Michigan has been that, under the Mental Health Code, Michigan must charge fees for some mental health services, at least to those who are able to pay. Without going into the legality of such a provision, it is significant to note that the Unification Report recommended that even community mental health services be charged for both minors and their parents and for adults. At the same time, however, it was recommended that review of the method to determine the ability to pay be made.

From this brief summary of only two areas concerning financing and the problems of local communities in Michigan, it is apparent first that Michigan has failed to develop a clear system of State or Federal reimbursement for the problems which communities face. Second, it is clear that, at least in special education and mental health services, the communities are requesting more autonomy, but also increased State support. In at least the two areas discussed, it appears that the State is giving greater authority and responsibility, as well as greater discretion in the use of State funds, to the communities in these matters.

4. THE PRESENT SITUATION IN MICHIGAN

At the present time, the issue of entitlements for handicapped people in this country is generally discussed in terms of one problem: money. Two national developments have exacerbated this aspect of meeting the problems of handicapped people. First is the proposal to reduce Federal support of many rehabilitation and social services programs. Second is the suggestion that Federal funding in the future would be a "block grant" approach, thereby giving greater discretion to States over how to spend Federal money. The reduction in Federal assistance is hard to assess. Because of the fact that we have little reliable information on the actual cost of making accommodation or changes or providing appropriate services for handicapped people, it is difficult to know if we are using presently expended resources in the best way. The absence of such reliable information has been one of the most obvious deficiencies in public planning for entitlements to handicapped people. Nevertheless, it is safe to assume that in most areas concerning entitlements for the handicapped people, the knowledgeable opinion is that resources are far too scarce.

The administration's second plan - to use block grants - has both financial and political implications. There would, in this system, be reduced funding. But just as important is the fact that instead of having priorities and requirements established at the Federal level, States would now have greater discretion in deciding how to use their funds. This would mean that advocates for handicapped individuals - instead of fighting and winning or losing their battles at the national level - will now have to go into the States and to the localities to establish their priorities. In some areas, it may be very difficult for disorganized, and politically weak, handicapped groups to compete with the more sophisticated and longer experienced groups also seeking public support for social programs. Uniform pattern of services which has been the goal of Federal policy will disappear under this plan and disabled people will once again find scattered, uneven and often illogical patterns of services.

Michigan, however, faces a third problem in addition to the general two discussed above. Because of the critical condition of the State's economy, resulting from economic problems in the automobile industry and other problems peculiar to the Northeast, Michigan's State resources to support entitlements for disabled people are severely strained. To the extent that Federal resources will be developed, Michigan can expect to have far greater difficulties in meeting its present obligation. Moreover, while the disabled community in Michigan is organized and has some political experience, it does not seem to be as experienced in fighting for social welfare support as other advocacy groups. In short, it would appear that disabled people in Michigan would not be spared from many of the problems which others would face in other States.

A third recent development may be very important for the State's division of entitlements. On April 20, 1981, the Supreme Court of the United States decided the case of Pennhurst v. Hailderman. The principal significance of this case was that Congress, in enacting the Developmental Disabilities Assistance and Bill of Rights Act of 1975, as amended, had not intended to impose upon states mandatory requirements that developmentally disabled individuals be placed in community settings. Instead, the Court held, Congress had merely intended to express its wish that such placements be undertaken where the States desire to do so. The Supreme Court looked upon the statute as essentially a funding statute, which did not create substantive obligations on the States.

The majority of the Court reached its conclusion on the basis of its reading of legislative history. It refused to accept as conclusive on congressional intent a few isolated statements made be some individual members of Congress. Rather, it looked principally to the language of the law itself and found that the law did not impose conditions which the States were required to meet.

In considering this decision, it is useful to analyze both its internal and external aspects. From an internal standpoint, the Court is essentially stating that it will refuse to interpret a law to impose what it considers to be substantial modifications and changes on State government. To the extent that the Court considered the placement of retarded individuals in community settings to be extraodinarily expensive, its decision is subject to question on the factual assumptions underlying it. There is considerable evidence, brought out by the dissent, that placement of individuals in community setting is far less expensive that the continued maintenance of large institutions with physical facilities. Nevertheless, the decision may be read as one more example of the Supreme Court's refusal to actively enforce a law where the intent of Congress is unclear or muddled. It represents judicial restraint.

The external aspects of the case concerned Federal/State relationships. It seems clear that many of the reforms undertaken in the name of the Federal entitlements statutes would not have been done unless those laws had been enacted. Now that the civil rights provisions of a major law have been abrogated, it is uncertain about the extent to which the States will continue to provide such community services as group homes. What the Supreme Court looked upon as a mere enticement to provide community placement has, generally, been regarded by many disabled people as a mandate. That authority now no longer exists.

In Michigan's case, there is independent State legislation which can be interpreted to require many of the rights which were at issue in the Pennhurst case. Nevertheless, by removing the national, Federal, civil rights incentive, there wil be continued uncertainty about the extent to which Michigan will honor its commitments. One of the greatest threats possible to a State or one of its programs is the withdrawal of Federal funding. While this is seldom exercised, it is nevertheless the lever by which most Federal handicapped rights have been enforced. But removing this remedy for violation of rights from a major law, the Court may have lead States to believe there would be few sanctions for violations.

Once again disabled people are faced with uncertainty about the rights which exist on their behalf. It is very likely that political work will have to begin anew. To the extent that cost issues become involved, it is important that decision makers and legislators understand that the question is not how much we must spend for handicapped people, but what our choices are in making those expenditures. We must choose to either help make handicapped people independent or to continue their dependency. If phrased in that context, the question of justifying their rights becomes easier even in a difficult economic period.